

CHAPTER 191

RAILROADS; CONSTRUCTION

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191.01 General provisions. (1) **SCOPE OF CHAPTER 191.** The provisions of this chapter shall apply to all railroads except street and interurban railroads in cities.

(2) **CONSTRUCTION, CERTIFICATE FROM COMMISSION PREREQUISITE.** No railroad corporation shall begin the construction of any proposed line of railroad in this state until it shall have obtained from the commission a certificate that public convenience and a necessity require the construction of said railroad, and such certificate shall constitute the license from this state to the company to build its proposed railroad.

191.02 Application for certificate of necessity. Application for such certificate shall be made within six months from and after the publication of its corporate articles.

191.03 Articles; publication prerequisite to certificate. No railroad corporation shall make application for such certificate unless it has caused a copy of its corporate articles to be published as a class 2 notice, under ch. 985, in each county in which the road is proposed to be located within 6 months next prior to the time of making such application, and files satisfactory proof thereof with the commission.

191.05 Maps and profiles with application; changes. Complete maps and profiles of the proposed road shall be filed with the application for a certificate of convenience and necessity. The commission may permit errors, omissions or defects in the application, maps and profiles to be supplied or corrected, and permit changes in the proposed route to be made.

191.06 Railroad extensions; certificate and notice necessary. If any railroad company organized prior to July 1, 1907, shall

desire to extend its lines in this state or to build branches connected therewith, or to construct any portion of its authorized line of railroad, it shall, before beginning construction thereof, obtain a certificate of convenience and necessity authorizing the construction; but it shall not be necessary to publish the articles of such railroad.

191.07 Hearing of applicants; notice.

Upon receiving such application the commission shall set a time and place for a hearing, which time shall not be less than 3 weeks nor more than 8 weeks from the date of filing the application, and the place shall be at the city of Madison, or at some place along the line of the proposed railroad, if the commission deems the latter more convenient, and shall give to the applicant notice thereof, which notice shall be published by the applicant, as a class 2 notice, under ch. 985, in each county in which the road, extension or branch is proposed to be located, and proof of such publication shall be filed with the commission.

191.09 Procedure under chapter 191. (1)

BEFORE THE COMMISSION. The provisions of chapter 195 relating to the subpoenaing of witnesses, the production of books, documents and papers, the administration of oaths, punishment for disobedience of an order of the commission or any commissioner, or of a subpoena, or for refusal of a witness to be sworn or to testify, witness fees, taking depositions, the keeping of a record of the proceedings, the taking of testimony, transcribing the evidence, or relating to the procedure before said commission not inconsistent with this chapter shall apply to all proceedings under this chapter.

(2) **COURT REVIEW OF ORDERS.** Orders of the commission under this chapter shall be subject to review in the manner provided in chapter 227.

191.10 RAILROADS; CONSTRUCTION

191.10 Certificate of necessity. (1) **ISSUANCE, FILING, CONDEMNATION.** If the commission shall find that the proposed railroad would be a public convenience and that a necessity requires its construction, the commission shall enter an order to that effect and forthwith issue to the applicant a certificate that public convenience and a necessity require the construction of said railroad as proposed. Such certificate shall be filed in the office of the secretary of state. Said commission shall approve the map showing the route of said railroad. The applicant shall cause a copy of such map certified by the secretary of the commission to be filed in the office of the register of deeds in each county in which said railroad shall be located. The filing of said certificate with the secretary of state and the filing of a copy of said map, as above provided, shall be conditions precedent to the right of said applicant to institute condemnation proceedings.

(2) **CERTIFICATE FOR PART OF LINE.** Whenever it shall appear to the commission that public convenience and a necessity do not require the construction of the railroad as proposed in the application, but do require the construction of a part thereof, the commission may issue a certificate for the construction of such part of said railroad as public convenience and necessity require.

(3) **REFUSAL OF CERTIFICATE; RENEWAL OF APPLICATION.** If the commission shall determine that said proposed railroad is not a necessity or is not required by public convenience, the commission shall by order refuse to grant a certificate, stating the reasons for such refusal. The application may be renewed after two years from the date of such refusal, but not sooner.

191.11 Revocation of certificate. In case any railroad company after obtaining a certificate that public convenience and a necessity require the construction of the whole or part of its railroad shall fail to begin such construction within one year from the date of the certificate, or having begun such construction, shall fail to prosecute the same, the commission may inquire into the reasons for such failure and may revoke the said certificate, if it shall appear, after notice and hearing, that such failure is unreasonable.

191.13 Temporary railroad extensions. (1) Any railroad corporation may build, maintain and operate temporary branches or extensions to and upon any timber lands, sand pit, gravel pit, stone quarry or agricultural enterprise, with all sidetracks, storage tracks, wyes, turnouts and connections necessary or convenient to the use of the same.

(2) No railroad corporation shall exercise such power until it shall have obtained from the commission a certificate that public convenience and necessity require the construction of said temporary railroad, and such certificate shall constitute the license to the company to build its proposed temporary railroad. Such certificate shall specify the length of time said railroad may be maintained and operated, and may be renewed from time to time upon application by the railroad company. At the expiration of the time specified in said certificate, or any renewal thereof, the railroad company shall discontinue, dismantle and remove said temporary railroad; and may prior to the expiration of such time, upon order of the commission, and after a hearing, upon notice to all parties interested and good cause shown, discontinue, dismantle and remove said railroad.

(3) No such branch or extension shall be constructed across, along or upon any street or alley within any city, until application therefor shall have been made to and acted upon by such city. The city may prescribe any reasonable terms and conditions for the construction of any such branch or extension.

(4) For such temporary railroad, the corporation may acquire any necessary lands or interests in lands. In appraising the damages sustained by any person by reason of the construction and operation of said railroad through and upon his land only the injury to the land and improvements thereon within the limits of the right of way of such railroad, and the fair annual value of the use of the land within such right of way and the fair amount of the annual damage sustained by the landowner to the land from which such right of way is severed, shall be considered, which items of damage and value shall be separately found and shall constitute the sole measure of the landowner's right to compensation. Payment of the damages on account of injury to the land and improvements thereon within such right of way shall be made as directed in s. 32.06 (9) (b), and payment of the amount found to be the fair annual value of the use of such land, together with the amount so found to be the annual damage to the land from which such right of way is taken, shall be made annually by the railroad company so long as such temporary railroad is maintained and operated.

(5) Every corporation constructing and operating such a temporary railroad shall erect and maintain sign boards not over one mile apart along the right of way of such railroad, upon which shall be printed the words: "Temporary Railroad".

(6) Any person who shall falsely represent that such railroad is other than a temporary

railroad shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail, not exceeding six months, or by both such fine and imprisonment, in the discretion of the court.

191.16 Construction items submitted to commission. Upon receiving the certificate of public convenience and necessity, the applicant shall before commencing construction submit to the commission a condensed specification of the character of construction that it proposes to install, showing the kind, quality and weight of the rail proposed to be used, the mode of construction, character, quality, and strength of all bridges, culverts and viaducts, the abutments and approaches proposed to be built, the grade of and proposed method of draining the roadbed, and the kind of power to be used and the plant and appliances to be employed in power production, and such other facts relating to the construction of said proposed railroad as the commission may require.

191.17 Public safety; investigation; approval of plans. Upon receiving the specification required by section 191.16 the commission shall examine the same and shall hear the applicant in support thereof, shall suggest and require modifications of said specification if the public safety so demand, eliminating so far as may be practicable, consistent with reasonable cost, all grade crossings of public highways, shall inspect the route of the proposed railroad if deemed desirable, and shall otherwise investigate and determine that the proposed construction will be adequate for securing public safety in the operation of said railroad, and thereupon the commission shall enter an order approving the specification and authorizing the construction of said railroad in accordance therewith.

191.18 Railroad crossings; electric railways; grade; expense. Every crossing of the track of a steam railroad hereafter made by the track of another steam railroad; and every crossing of the track of an electric or street railway surface road hereafter made by the tracks of a steam railroad and every crossing of the track of a steam railroad or of any other electric or street railway surface road hereafter made by the track of an electric or street railway surface road shall be above, below or at grade of the tracks proposed to be crossed as the public service commission shall determine after hearing the parties upon reasonable notice prescribed by said commission. In such determination, the public service commission shall fix the proportion of the expense of originally constructing,

operating, and maintaining such crossing, which shall be paid by the owners of said tracks respectively.

191.19 New roads; report; inspection; protective appliances. (1) Upon the completion of the construction of any railroad under the approved specification, the company shall, before operating the same for public service, report to the commission; and the commission shall thereupon inspect the work, and if it shall be found that the railroad has been constructed in accordance with the approved specification and is otherwise suitable and properly constructed so as to secure public safety in the operation thereof, the commission shall enter an order authorizing its operation, which order shall be presumptive evidence of the sufficiency of such construction.

(2) Said order shall specify in general terms the methods and conditions of such operation and it shall not be lawful for any such railroad to be operated till such order has been granted.

(3) If upon inspection the commission shall deem that public safety requires the installation, operation and maintenance of some protective appliance at any grade crossing of railroad tracks the commission may, before granting said order, after notice and hearing, require the installation, operation and maintenance of suitable protective appliances, and shall apportion the expense of constructing, maintaining and operating such protective appliances among the owners of said tracks.

191.20 Railroad routes; right to alter. Every railroad company may, by the vote of two-thirds of its directors, alter or change the route of its railroad, by making and filing in the office of the commission and also by recording in the office of the register of deeds of the county or counties where such alteration or change is to be made, a surveyed map and certificate of such alteration or change, provided that such alteration or change shall not deviate from the original route for a greater distance than one mile at any point, and provided that no city or village shall be left off said railroad by such change of route, and provided that the original termini of said railroad, or the route in any city or village, shall not be changed without the approval of the commission after notice to the municipality.

191.21 Notices in counties without newspapers. If no newspapers shall be published in any county in which a railroad is proposed to be located, the publications required by this chapter may be made in such manner and at such places as the commission shall designate.